



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Optical Associates, Inc.
1425 McCandless Drive
Milpitas, California 95035

Attn: *Charles Turk*
President

Dear Mr. Turk:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Optical Associates, Inc. (OAI) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

Facts constituting violation:

Charge 1

On or about December 2, 1998, OAI exported a U.S.-origin Mask Aligner and parts from the United States to Bhaba Atomic Research Center (BARC), an entity on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a Department of Commerce license as required by Section 744.11 of the Regulations. BXA alleges that by engaging in conduct prohibited by or contrary to the Regulations, OAI committed one violation of Section 764.2(a) of the Regulations.

Accordingly, OAI is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

¹ The violation at issue occurred in 1998. The Regulations governing the violation at issue are codified at 15 C.F.R. Parts 730-774 (1998), and to the degree to which they pertain to this matter, are substantially the same as the 2000 version of the Regulations.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)).



The maximum civil penalty allowed by law of \$11,000 per violation (*see* Section 764.3(a)(1) of the Regulations and 15 C.F.R. § 6.4(a)(3) (2000));

Denial of export privileges (*see* Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (*see* Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If OAI fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7 of the Regulations.

OAI is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, OAI's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of OAI's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Melissa B. Mannino, Esq." below the address. Ms. Mannino may be contacted by telephone at (202) 482-5304.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
OPTICAL ASSOCIATES, INC.)
1425 McCandless Drive)
Milpitas, California 95035,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Optical Associates, Inc. (OAI) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2000)) (the Regulations),¹ issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§2401-2420 (1991 & Supp. 2000)) (the Act).²

WHEREAS, the Office of Export Enforcement, Bureau of Export Administration (BXA), has notified OAI of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations, based on allegations that on or about December 2, 1998, OAI exported a U.S.-origin Mask Aligner and parts from the United States to Bhaba Atomic Research Center

¹ The violation at issue occurred in 1998. The Regulations governing the violation at issue are codified at 15 C.F.R. Parts 730-774 (1998), and to the degree to which they pertain to this matter, are substantially the same as the 2000 version of the Regulations.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)).

(BARC), an entity on the Department of Commerce Entity List, Supplement No. 4 to Part 744 of the Regulations, without obtaining a Department of Commerce license as required by Section 744.11 of the Regulations, in violation of Section 764.2(a) of the Regulations;

WHEREAS, OAI has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the appropriate Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, OAI neither admits nor denies the allegations contained in the proposed Charging Letter;

WHEREAS, OAI wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, OAI agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered;

NOW THEREFORE, OAI and BXA agree as follows:

1. BXA has jurisdiction over OAI, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and OAI agree that the following sanction shall be imposed against OAI in complete settlement of the alleged violation of the Act and the Regulations set forth in the proposed Charging Letter:

- a. OAI and all of its successors and assigns, officers, representatives, agents, and employees, may not, for a period of three years from the entry of the appropriate Order, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India, including, but not limited to:
 - i. Applying for, obtaining, or using any license, License Exception, or export control document;
 - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India; or
 - iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to India that is subject to the Regulations, or in any other activity subject to the Regulations that involves India.

3. OAI agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except

with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; and (b) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against OAI in connection with any violation of the Act or the Regulations arising out the transaction identified in the proposed Charging Letter.

5. OAI understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.


6. BXA and OAI agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and OAI agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

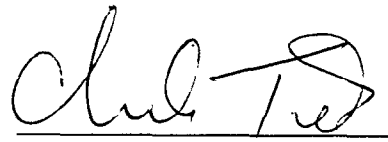
7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

OPTICAL ASSOCIATES, INC.


Mark D. Menefee
Director
Office of Export Enforcement


Charles Turk
President

Date: 9/28/00

Date: 9/14/00

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
OPTICAL ASSOCIATES, INC.)
1425 McCandless Drive)
Milpitas, California 95035,)
)
Respondent _____)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Optical Associates, Inc. (OAI) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the Regulations),² based on allegations that, on or about December 2, 1998, OAI exported a U.S.-origin Mask Aligner and parts from the United States to Bhaba Atomic Research Center (BARC), an entity on the Department of Commerce Entity List, Supplement No. 4 to Part

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)). The Act was reauthorized on November 13, 2000. See Pub. L. No. 106-508.

² The violation at issue occurred in 1998. The Regulations governing the violation at issue are codified at 15 C.F.R. Parts 730-774 (1998), and to the degree to which they pertain to this matter, are substantially the same as the 2000 version of the Regulations.

744 of the Regulations, without obtaining a Department of Commerce license as required by Section 744.11 of the Regulations, in violation of Section 764.2(a) of the Regulations, and;

BXA and OAI having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that, for a period of three years from the date of this Order, Optical Associates, Inc., 1425 McCandless Drive, Milpitas, California, 95035, and all of its successors or assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to India, or in any other activity subject to the Regulations that involves India; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to India that is subject to the Regulations, or in any other activity subject to the Regulations that involves India.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations to India;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to India, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to India;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to India; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to India, and which is owned, possessed or controlled by the denied person, or service any item, of whatever

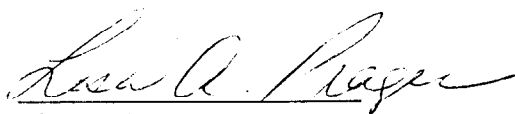
origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to India. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Lisa A. Prager
Acting Assistant Secretary
for Export Enforcement

Entered this 15th day of March, 2001.